No. ~~1080~~ 59

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE OF THE UNITED STATES, ET AL.,
Appellants,

vs.

ROSCOE C. FILBURN,
Appellee.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

BRIEF FOR THE APPELLEE.

WEBB R. CLARK,
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INTRODUCTION.

The brief of Counsel for Appellants, which we assume the members of the Court will have read first, discusses the relevant facts of this case and thus obviates the necessity of an attempt to fully discuss them herein. Therefore, for the sake of brevity, we shall endeavor to avoid repetition. For the same reason we shall make no effort to reply to the many subtle and inconsequential arguments with which opposing counsel's brief is filled. For a complete statement of our contentions we respectfully refer the Court to the Complaint of Appellee. (Record, page 1.)

Contrary to what may have been implied, we are not seeking to modify and invalidate the Agricultural Adjustment Act of 1938 in its original enactment, or as amended prior to the amendment of May 26, 1941. The issue is a simple one, namely, that the joint resolution of Congress, approved May 26, 1941, which amended the penalty provisions of the Agricultural Adjustment Act of 1938, was a departure from the philosophy and theory of the Act and a reversion to the Agricultural Adjustment Act of 1933, which this Court declared unconstitutional because it sought to regulate the production of farm products.

AMENDMENT OF MAY 26, 1941.

To avoid a misunderstanding as to the full import and effect of said amendment of May 26, 1941, and to convince the Court that opposing counsel are incorrect in

their assertion that appellee could escape paying the penalties, we quote the provisions of the aforesaid amendment:

(1) "The farm marketing quota under the Act for any crop of wheat shall be the actual production of the acreage planted to wheat on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to wheat on the farm which is in excess of the farm acreage allotment for wheat. The farm marketing quota under the Act for any crop of corn shall be the actual production of the acreage planted to corn on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to corn on the farm which is in excess of the farm acreage allotment for corn.

"The normal production, or the actual production, whichever is the smaller, of such excess acreage is hereinafter called the 'farm marketing excess' of corn or wheat, as the case may be. For the purposes of this resolution, 'actual production' of any number of acres of corn or wheat on a farm means the actual average yield of corn or wheat, as the case may be, for the farm, times such number of acres.

(2) "During any marketing year for which quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess of corn and wheat. The rate of the penalty shall be 50 per centum of the basic rate of the loan on the commodity for cooperators for such marketing year under section 302 of the Act and this resolution.

(3) "The farm marketing excess for corn and wheat shall be regarded as available for marketing, and the penalty and the storage amount or amounts to be delivered to the Secretary of the commodity

shall be computed upon the normal production of the excess acreage.

"Where, upon the application of the producer for an adjustment of penalty or of storage it is shown to the satisfaction of the Secretary that the actual production of the excess acreage is less than the normal production thereof, the difference between the amount of the penalty or storage as computed upon the basis of normal production and as computed upon the basis of actual production shall be returned to or allowed the producer. The Secretary shall issue regulations under which the farm marketing excess of the commodity for the farm may be stored or delivered to him. Upon failure to store or deliver to the Secretary the farm marketing excess within such time as may be determined under regulations prescribed by the Secretary, the penalty computed as aforesaid shall be paid by the producer. Any corn or wheat delivered to the Secretary hereunder shall become the property of the United States and shall be disposed of by the Secretary for relief purposes in the United States or in foreign countries, or in such other manner as he shall determine will divert it from the normal channels of trade and commerce.

(4) "Until the producers on any farm store, deliver to the Secretary, or pay the penalty on, the farm marketing excess of any crop of corn or wheat, the entire crop of corn or wheat, as the case may be, produced on the farm shall be subject to a lien in favor of the United States for the amount of the penalty.

(5) "The penalty upon corn or wheat stored shall be paid by the producer at the time and to the extent of any depletion in the amount of the commodity so stored, except depletion resulting from some cause beyond the control of the producer.

(6) "Whenever the planted acreage of the then current crop of corn or wheat on any farm is less than the farm acreage allotment for such commodity, the total amount of the commodity from any previous crops required to be stored in order to postpone or avoid payment of penalty shall be reduced by that amount which is equal to the normal production of the number of acres by which the farm acreage allotment exceeds the planted acreage. The provisions of section 326 (b) and (c) of the Act shall be applicable also to wheat."

THE AMENDMENT OF MAY 26, 1941, COMPARED WITH THE ORIGINAL 1938 ACT. ITS EFFECT.

The 77th Congress by the enactment of the joint resolution of May 26, 1941, amending the provisions of the Act of 1938 relating to wheat, worked a complete departure from the basic theory of regulating marketing of the commodities and attaching the penalties thereto at the time of sale.

One need but refer to the penalty provisions of the original Act of 1938, pertaining to the different commodities, to be convinced that at that time there was an honest attempt on the part of Congress to apply the penalty provisions to a marketing quota rather than to an acreage or production quota. Section 314, the penalty provision relating to tobacco, specifically provides that the penalty shall be paid at the time the tobacco is sold in the market, and, moreover, provides that the penalty shall be paid by the buyer rather than the producer. Section 325, the penalty provision relating to corn,

stated that "any farmer who * * * markets corn * * * shall be subject to a penalty of 15 cents per bushel of the excess so marketed." This section was in force and effect, the same as the wheat penalty section, until May 26, 1941. Section 339, the penalty provision relating to wheat, stated, prior to May 26, 1941, "any farmer who * * * markets wheat in excess of the farm marketing quota for the farm on which such wheat was produced, shall be subject to a penalty of 15 cents per bushel of the excess so marketed." Section 348, the penalty provisions relating to cotton, provides "any farmer who * * * markets cotton * * * shall be subject to the following penalties with respect to the excess so marketed." Section 356, the penalty provision relating to rice, provides "any producer who markets rice in excess of his marketing quota shall be subject to a penalty of one quarter of one per cent per pound of the excess so marketed."

Considering the above quoted provisions of the original enactment of the 1938 Act and comparing them to the amendment of May 26, 1941, it is obvious that Congress abandoned the wheat marketing theory and the interstate commerce theory when it imposed the penalty on the excess wheat at harvest and denied farmers the right to market or otherwise dispose of any of their wheat until the aforesaid penalty was paid. Furthermore, it is a misnomer to call the penalty provisions of May 26, 1941, "wheat marketing penalties" when actually they are "production penalties."

DISCRIMINATORY FEATURES OF THE AMENDMENT OF MAY 26, 1941.

There are no benefits under this Act enuring to those who do not cooperate. In truth and in fact the penalties imposed upon the non-cooperating wheat farmer are punitive in their nature and effect and are so intended. Otherwise, there would be no discrimination in the Act between the cooperators and the non-cooperators. For example, each would be entitled to the same treatment as to loans provided for under the Act. The non-cooperators are purposely and intentionally punished. Admitting for the sake of the argument that in some remote and mystical manner, interstate commerce can be affected by the non-cooperators using on the farm their excess wheat, it cannot under any stretch of the imagination be conceived that the farmers would affect interstate commerce by destroying their excess wheat. By destroying their excess wheat they would be forestalling the possibility of the excess wheat affecting in any degree whatsoever interstate commerce. This is more than can be said for the Secretary of Agriculture when he is permitted to confiscate it. One of the alleged methods of avoiding paying the penalty is for the producer to deliver his excess wheat to the Secretary of Agriculture who in turn is permitted to dispose of the wheat in some manner of his own choosing as directed under the Act. If the Secretary of Agriculture were to turn the excess wheat over to the Red Cross or to starving peoples of other nations there would be some who would argue that

such action of the Secretary would affect the commerce of wheat.

Cotton and tobacco farmers are permitted to store their products for marketing in future years. Wheat farmers, under the provisions of the Act as amended on May 26, 1941, are denied the privilege of storing their wheat, any part of it, without paying the penalty of 49 cents a bushel on all of the excess production. By thus storing their wheat they would not be affecting the flow of interstate commerce during the time that it remained in storage, although their purpose might be to sell it not locally, but to ship it in interstate commerce.

Another inequality which might be considered is that the amendment of May 26, 1941, creates the fiction that all the excess wheat produced is available for marketing. Wheat, like cotton and tobacco, may be stored for long periods of time, and it frequently is. Wheat farmers either own or rent threshing machines or pay for the threshing, all of the threshing being done on the farm. The farmers keep the straw for their own farm purposes and likewise keep and store their wheat on the farm, often consuming all the wheat on the farm. The farmers who thus consumed or stored their wheat in harvest time in 1941 could not reasonably be charged with having burdened the normal currents of commerce in wheat during the marketing year of 1941-1942 unless and until they removed their wheat from storage and took it somewhere to market it for interstate shipment.

The result is that not an equality but a gross inequal-

ity is established, for the reason that under the provisions of the Act cotton and tobacco farmers are privileged to hold their excess products sans penalty, indefinitely, and for marketing in any year other than the one in which a marketing quota has been declared. On the other hand, the wheat farmers cannot store, or, what's more, use for domestic consumption, any portion of their wheat crop without paying the 49 cent penalty on the excess or permit the government to confiscate said excess. The wheat farmers cannot even destroy the excess and then sell the normal production. The excess wheat is not even permitted to rot on the ground, be wasted, or destroyed without paying the penalty. This is certainly violative of the 5th Amendment to the Constitution, to say nothing of being punitive and coercive, and regulative to the point of invading state and individual rights.

HISTORY OF RECENT FARM LEGISLATION PERTAINING TO WHEAT PRODUCTION.

The original Agricultural Adjustment Act was passed May 12, 1933, by the 73rd Congress. The expressed purpose of the Act was the relief of distressed farmers. The proposed relief was to be accomplished by entering into agreement between the Government, through the Secretary of Agriculture, and those farmers who were willing to contract with the Government by agreeing to restrict or limit production of certain basic commodities, including wheat, by and through a decrease of production acreage. The contracting, or what were and still are called, cooperating farmers, were to be paid benefits of

so much per acre for every acre which under the agreement they refrained from seeding or planting. The revenue for these cash benefits was to be raised by a processing tax upon all immediate processors of farm products. Thus, the Agricultural Adjustment Act was based upon voluntary participation by the farmers or producers and payment of benefits financed by an obligatory processing tax on the specifically mentioned basic commodity of wheat, corn, cotton, hogs, tobacco, rice and milk.

However, on January 6, 1936, this Court in the case of United States vs. Butler, 297 U. S., at page 1, declared the Act unconstitutional in respect to both the tax and the alleged "voluntary" participation, holding that as to the latter the Congress had no authority to regulate farm production, and no legal right to coerce the farmer by such an "illusory" method as benefit payments for restricted production.

Immediately after the rendition of that decision the Congress took further action and repealed in toto such compulsory acts as the Bankhead Cotton Act, the Kerr-Smith Tobacco Act, and the Warren Potato Act, realizing that the Supreme Court would likewise promptly declare them unconstitutional. Within sixty days, to-wit, on February 29, 1936, the Congress passed a substitute for the declared unconstitutional Agricultural Adjustment Act, known as the Soil Conservation and Domestic Allotment Act, providing therein for benefit payments to farmers based on compliance with soil conservation practices and extending the agreed restriction of acreage to

all crops instead of merely the basic ones enumerated in the original Agricultural Adjustment Act.

On February 16, 1938, the 75th Congress passed the second Agricultural Adjustment Act. This second and present Act provides for the payment of parity prices or parity income to the producers of wheat, corn, cotton, tobacco and rice. It provides for commodity loans, compliance with the Act being a condition precedent to the obtaining of the loan. It sets up the machinery for farmers to vote on the question of compulsory marketing quotas. It prescribes penalties for all who produce in excess of the acreage allotments granted by the Secretary of Agriculture.

No election or referendum was held as to wheat production until May 31, 1941. In other words, in the years 1938, 1939 and 1940, the compulsory features of the Act were not invoked by the Secretary of Agriculture by a call of a referendum although during those years there were surpluses of wheat which warranted an invocation of the referendum prescribed in the Act.

The Secretary of Agriculture, acting pursuant to and in accordance with the applicable provisions of the Agricultural Adjustment Act of 1938, as amended, proclaimed (1) that the national acreage allotment for the 1941 crop of wheat was 62 million acres and the total and normal supply of wheat for the marketing year commencing July 1, 1940, were 949 million and 872 million bushels, respectively; (2) that the Secretary of Agriculture apportion the national acreage allotment of 62 million acres among the several states; (3) apportioned the State acreage

allotments among the counties; (4) issued regulations relating to counties' normal yield of wheat; (5) issued regulations authorizing the County Committees to determine and fix the acreage allotments among the farmers in the respective counties throughout the Nation; (6) issued regulations authorizing the County Committees to determine and fix the acreage allotment and normal yields of wheat in the respective Counties; (7) issued a proclamation making the national marketing quota for wheat effective with respect to the 1941 crop, stating that the total supply of wheat on hand and harvested in 1941 was one billion 236 million bushels and that such supply would exceed a normal year's consumption and exports of 755 million bushels by more than 35 per cent; (8) issued instructions relating to the referendum of wheat producers to be held on May 31, 1941; (9) issued the proclamation setting forth the results of the referendum and stating that a total of 559,630 wheat farmers voted in forty states; that of this number 453,569, or 81 per cent voted in favor of marketing quotas and 106,061, or 19 per cent opposed the quotas.

The Court's attention is respectfully called to page 17 of the Record which contains a summary of the results of the referendum by states. The Court will note that Indiana, New Jersey, New York, Ohio, Pennsylvania and West Virginia, among others, all large wheat producing states, voted against the alleged marketing quotas, and that the referendum was carried by a more than two-thirds vote solely by the votes of the large wheat producing States of the West.

While it is true that appellee, as well as the other wheat farmers of the United States, was notified in 1940 of his acreage allotment, he had no reason to believe that the Secretary of Agriculture in May of 1941 would declare a wheat marketing quota for that year. The Secretary had in like manner, during the previous years, notified the appellee and the other wheat farmers of the United States of their allotments. But in each instance he had failed to follow through with a declaration of a wheat marketing quota. In fact, the indications to appellee and all other wheat farmers throughout the Nation were that because of the war there would be a shortage of wheat in 1941. In the fall of 1940, when the wheat was planted, the Secretary of Agriculture himself shared this opinion with the farmers of the Nation and according to his own admissions encouraged the deliberate planting of more than the allotted acreage.

Not until May 9, 1941, did appellee or the other wheat farmers of the Nation learn that the Secretary of Agriculture had changed his opinion. It was on that date, for the first time under the enactment of the Agricultural Adjustment Act of 1938, that the Secretary of Agriculture sought to establish marketing quotas for wheat. The significant fact to remember is that the proclamation of the Secretary of Agriculture on May 9, 1941, under and by virtue of the provisions of the Act, established as of that date wheat marketing quotas for 1941. When appellee and the other wheat farmers of the Nation planted their wheat in 1940 they knew but one thing, namely, that if a wheat marketing quota would be de-

cleared in 1941, they would be subjecting themselves to a penalty of 15 cents per bushel for the excess bushels of wheat produced, and that the 15-cent penalty would not be assessed against him or them until the excess wheat was taken to the market and sold. On May 9, 1941, when the Secretary of Agriculture proclaimed wheat marketing quotas for the year 1941, there was in effect Section 339 which provided for the payment of the aforesaid 15-cent penalty on the sale or marketing of the excess wheat. We therefore emphasize the fact that the amendment of May 26, 1941, which superseded Section 339 with the 15-cent penalty aforesaid, was passed and became effective after the wheat marketing quota for 1941 was in full force and effect. The referendum which was to follow on May 31, 1941, had nothing to do with establishing the effectiveness of the wheat marketing quota for 1941. The proclamation of the Secretary of Agriculture on May 9, 1941, established the wheat marketing quota for that year. It was only subject to being set aside by an adverse referendum vote on May 31, 1941.

SPEECH OF THE SECRETARY OF AGRICULTURE.

The Court is respectfully requested to read every word of the speech of the Secretary of Agriculture which he made at Hutcheson, Kansas, on May 19, 1941. (Record, pages 20 to 28.) This speech was part of the aggressive campaign carried on by the Secretary of Agriculture to induce the farmers of the Nation to vote favorably on the wheat referendum to be held on May 31, 1941. The Court

will find in that speech not only an appeal to the farmers, but coercion and threats as well. Nowhere in that speech can it be reasonably contended that the Secretary of Agriculture gave any indication to the farmers of the Nation of the May 26, 1941, amendment, or of the intention to change the wheat penalty provisions of the Act. Judging from the speech alone, the Secretary of Agriculture was totally oblivious to any contemplated action on the part of Congress looking toward the amendment of the wheat penalty provisions.

Government counsel, since appealing the case to this Court, have attempted to bolster their case by adding what they term Appendix No. 1, which is a purported press release, of date May 27, 1941. Previous to the hearing of the case before the three-judge court, counsel for the parties had entered into a stipulation of facts and this purported press release was never submitted by Government Counsel and nowhere is it a part of the record in this case. We feel that it should be ignored by this Court, not only because it does not constitute a part of the record of the case, but furthermore, because there is nothing to indicate to this Court that the purported release was ever published. But if the Court wishes to go farther and consider the purported press release, we assert that there was not sufficient information in that to warn the farmers of the penalty provisions of the May 26th amendment, and thus give them an opportunity to vote intelligently and advisedly on May 31, 1941.

The speech of May 19, 1941, was the climax of the campaign conducted by the Secretary of Agriculture, and the

farmers of the Nation had the right to rely upon his words orally and directly addressed to them on that date.

The majority opinion of the three-judge court, at page 109 of the Record, is respectfully referred to. The Judges who rendered that opinion quote the following language from the Secretary's speech:

> "* * * To make wise decisions, we need to know the facts. What then, in view of the vote on May 31, are some of the facts about wheat? For one thing, we have a record amount of old wheat on hand and a bumper crop in prospect. That is something to be looked at with satisfaction on one hand and with alarm on the other. * * * Because of the uncertain world situation, we deliberately planted several million extra acres of wheat this year. * * * Farmers should not be penalized because they have provided insurance against shortages of food. The nation wants farmers safeguarded against unfair penalties. The nation also wants other protection given agriculture. * * * As you all know, parity is one of the most important objectives of the national farm programs and will continue to be a goal, * * *.
>
> "Only last week, the Senate and House sent to the White House a bill calling for an 85 per cent of parity loan for wheat * * *.
>
> "But no wheat loan will be made unless wheat farmers vote for marketing quotas and without the loan there is no hope for parity on wheat in 1941. So parity for wheat is up to the wheat farmers themselves. * * *
>
> "The law provides that wheat loans will not be made if wheat growers vote down marketing quotas. * * * The continuance—or discontinuance—of government loans on wheat is at stake in this referendum on May 31. To put it bluntly, no quotas, no

loans. And, judging from prices in Canada, rejection of marketing quotas on May 31 would just about cut the price of wheat in this country in half.

"I wish that corn and wheat farmers were able to vote on marketing quotas before they plant their crops, instead of afterwards as is the case now. Cotton, tobacco, and rice farmers vote on quotas before they plant and I see no good reason for denying this privilege to wheat and corn growers. I am sorry that the legislation authorizing loans at 85 per cent of parity did not change the time for voting on wheat and corn quotas. This provision was recommended by the Department of Agriculture and we plan to recommend it to Congress again. Yet the fact that the referendum on wheat quotas comes after the crop is almost ready for harvest in no way alters the significance of the vote. * * *"

The above language evidently impressed the Judges who rendered the majority opinion of the Court not only with the fact that the May 26 amendment was retroactive in its nature and effect, but that the equities of the case were altogether favorable to the appellee. We wish to point out an additional fact for the consideration of this Court, namely, that when the Secretary of Agriculture made his speech he failed to mention that there would be a change in the law to the effect that the law would not apply to those farmers who planted 15 acres or less. The actual fact is quite significant, namely, that not until several hours after the polls had opened on May 31, 1941, did the Secretary of Agriculture notify the farmers of the Nation that all of them who had planted 15 acres or less would be disfranchised; in other words, not permitted to vote. (See Federal Registers, Daily

Editions, Vol. 6, No. 26, pp. 1093-1095; Vol. 6, No. 94, pp. 2420-2421; and Vol. 6, No. 107, p. 2689.) Thus, it will be seen that the Secretary of Agriculture changed the rules of the game after the game had started. These changes were drastic and seriously affected the rights and privileges of those whose livelihood is concerned with the production of wheat and other farm commodities.

LAW OF THE CASE.

We realize that this Court is thoroughly conversant with all of the decisions cited by Government Counsel as well as the decisions which we might cite as applicable to the facts of this case. We therefore believe it unnecessary for us to quote from or to enter into any extensive arguments disagreeing with the constructions placed upon those decisions by Government Counsel. Government Counsel have cited the Mulford case in support of their contentions. We radically disagree with them on the import and effect of the Mulford decision for we believe it to be thoroughly in accord with our views and that it supports our contentions. Among other things, it defines the limitations of the Interstate Commerce Clause of the Constitution as applied to the Agricultural Adjustment Act of 1938. Based upon the tobacco marketing penalty, it implies that Congress does not have the power to regulate production or the power to coerce. It is pointed out therein that "regulations to be effective must, and therefore may, constitutionally apply to all sales." At page 47 of the opinion it is stated:

"The statute does not purport to control production. It sets no limit upon the acreage which may be planted or produced and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. It purports to be solely a regulation of interstate commerce, which it reaches and affects at the throat where tobacco enters the stream of commerce,—the marketing warehouse. * * * Regulation to be effective, must, and therefore may, constitutionally apply to all sales. * * * Any rule, such as that embodied in the Act, which is intended to foster, protect and conserve that commerce, or to prevent the flow of commerce from working harm to the people of the nation, is within the competence of Congress. Within these limits the exercise of the power, the grant being unlimited in its terms, may lawfully extend to the absolute prohibition of such commerce, and a fortiori to limitation of the amount of a given commodity which may be transported in such commerce. * * *

"On the basis of these facts, it is argued that the statute operated retroactively and therefore amounted to a taking of appellants' property without due process. The argument overlooks the circumstances that the statute operates not on farm production, as the appellants insist, but upon the marketing of their tobacco in interstate commerce. The law, enacted in February, affected the marketing which was to take place about August 1st following, and so was prospective in its operation upon the activity it regulated. The Act did not prevent any producer from holding over the excess tobacco produced or processing and storing it for sale in a later year; * * *."

The prime distinction between the Mulford case and the present case is the intervention between the May 9,

1940, proclamation when the quotas were announced as effective and the referendum of May 31, 1941, of the amendment of May 26, 1941, which operated retroactively and not prospectively on the farmers' crops. Furthermore, the amendment of May 26, 1941, does exactly what the Mulford case prohibits, namely, (1) controls production, (2) it sets limitations upon acreage to be planted or produced, (3) it imposes penalties for the planting and production of wheat in excess of the marketing quota, (4) it is not such a regulation of interstate commerce which reaches and affects the source where it enters the stream of commerce, (5) it does not apply to sales. In those respects the amendment of May 26, 1941, in view of the Mulford case, cannot be held constitutional. Both the Butler and Mulford cases are the law as announced by this Court.

The case of United States vs. Darby, cited by Government Counsel, is favorable to and supports our contention that there remain well-defined limitations to the extension of the Interstate Commerce Clause. The Darby case goes no farther than the Mulford case, or the original penalty provisions of the Act of 1938, and it limits the constitutional power of Congress invoked under the Commerce Clause to shipments in interstate commerce and to the production of goods manufactured and destined for shipment in interstate commerce.

Government Counsel, in their brief, have pointed out the difference between wheat, as a commercial product, and other products of the farm. They note that tobacco is not consumed on the farm where raised, but is raised

solely for sale; that the same applies to cotton. They candidly state that wheat is produced for consumption either on the farm or in the locality where it is raised, and that it is not essentially such a commercial product as requires interstate shipment. Their brief points out that a large portion of the production of wheat is used locally and, if sold, is sold to local elevators. They point out that there are thirty thousand local elevators. It is not such a product as can be said competes with other products that enter into interstate commerce. Government Counsel point out that practically all farmers sell locally, indicating that wheat does not come within the category of milk and other farm products that are sold directly in interstate commerce. This distinguishes our case from such cases as The United States of America vs. The Wrightwood Dairy Company, and Clover Leaf Butter Company vs. Patterson, cited by Government Counsel.

Government Counsel cite the fact that it is impossible to trace the wheat production of any one farm into interstate commerce. They can arrive at figures showing how many bushels are sold but of the amount sold they are unable to state what portion, if any, enters into interstate commerce. Our reason for stating this is that sales of wheat are local.

The misrepresentations complained of in United States vs. Rock Royal Cooperative are not at all comparable with the speech the Secretary of Agriculture made directly to the wheat farmers of the Nation on May 19, 1941. We, therefore, feel that the Rock Royal case can

easily be distinguished from the case at bar. Milk was the product in the Rock Royal case and that entered into interstate commerce and affected the price as well. All of this, this Court has held, could be regulated under such circumstances. Consequently, the only two cases that can apply to the situation at hand are the Butler case and the Mulford case. They are the only two that have any factual similarity.

Respectfully submitted,

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